	Page 448
1	CLOSED SESSION
2	Whereupon,
3	KEN SOLOMON
4	was called as a witness by counsel for the
5	Tennis Channel, Inc. and, having been first
6	duly sworn, was further examined and testified
7	further as follows:
8	FURTHER CROSS-EXAMINATION
9	BY MR. CARROLL:
10	Q You don't pay any rights fees for
11	the Australian Open, right?
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21	Q
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	Page 449
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4	A
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6	Q
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14	Q And for your Wimbledon, we might
15	as well do this while we're in closed. For
16	Wimbledon, my understanding is that the rights
17	fees that you pay are only about
18	a year. Is that correct?
19	A I believe there are more than that
20	now. And we would never put the word "only"
21	in front of .
22	Q Hadn't your own investor described

1 A Yes.

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Q And you see how he says, "But if you were able to win some decent Wimbledon content, then I would be willing to support hopefully the modest costs, depending upon what it is for the strategic benefits and despite the fact we don't exactly have spare funds sitting around. I cannot imagine that such an incrementally small amount of Wimbledon content would actually make a difference to any of our distributors, but I would expect -- please confirm -- that we should be able to monetize this content well with advertisers given its premium nature." Have I read it correctly? Α Yeah.

Q And do you remember your investor Mr. Patterson writing this to you in April of 2007?

A Yes.

Q So, now, I guess the other two majors are the U.S. Open and the French Open?

finals and the semis are much less costly to

get because the viewership is much lower?

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Page 455 1 I have completely -- I don't know. 2 The semifinals, you have one of 3 the two semifinals? 4 Α Yes, we do. 5 You don't have them both? Q I never inferred that we did. 6 Α 7 Q Okay. 8 JUDGE SIPPEL: What do you mean 9 "both"? 10 THE WITNESS: We have two 11 semifinals that lead into the finals, which is 12 kind of saying that we have early rounds but 13 not later rounds. And the truth is that of 14 the 15 days, we go for 14 of the 15 live and 15 then have the 15th on the delayed basis. 16 it just seemed like a mischaracterization of 17 what we have. 18 And his question I believe to me 19 was, are the early rounds less valuable or 20 less interesting to people than the later 21 rounds? And my answer was no.

BY MR. CARROLL:

0 Do you think the --

JUDGE SIPPEL: Are you talking about the French Open? I'm sorry. I --

MR. CARROLL: Yes. We are on the 4 5 French Open right now.

> JUDGE SIPPEL: Thank you.

BY MR. CARROLL:

So you think the early rounds of the French Open are as competitive to acquire? Well, let me ask this question. Did you have to outbid anybody to get the early rounds of the French Open? Was there anybody else who even bid for them?

> Α Yes.

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Who else bid for them?

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And that was in what year, 2009? 0

That was in 2006, I believe. Α

Did you work out a deal with 0 where you share the coverage with them?

Α We were forced to do that because the French required that a small portion of

Page 457 1 the content got to a broader level of 2 distribution, but because our distribution was 3 minimized by our -- by all the things that 4 we've talked about, that we had to give them 5 some of it. But we outbid them on a 6 7 competitive basis. They had actually 8 controlled those rights prior to the 9 agreement. And we were able to get those 10 rights away from And this was in 2007? 11 0 12 Α I believe that's correct. 13 And you're not claiming that 0 14 Comcast was discriminating against you in 15 2007? 16 Α No. 17 0 Good. On the U.S. Open you 18 acquired the rights. Is it 2009 you acquired 19 them, some rights to the U.S. Open?

latter part of 2008 for its first telecast in

We acquired them I believe in the

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August of 2009.

Page 458 1 Q And for the U.S. Open, can we 2 agree that you don't have any of the big 3 matches at the end: semifinals or the finals? 4 You have some early match play? 5 I wouldn't agree with that 6 statement. 7 MR. CARROLL: Okay. Let's 8 actually mark this because this may help clear 9 this up. BY MR. CARROLL: 10 11 Do you have any semifinal or final 0 12 matches for the U.S. Open live? 13 We have them. We don't have them 14 live. 15 I'm referring to live coverage. 0 16 Α Okay. 17 You don't have any of the weekend 0 final matches live on the Tennis Channel? 18 19 Network has that as well, correct? 20 CBS has that. We do have weekend Α

matches. We do have weekend matches in prime

time in the middle weekend, which are

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compilation of some pages that were provided

to us in this case, I think, by your side, by

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your expert. Do you recognize this as
programming listing for Tennis Channel for
various tournaments?

A I don't recall this particular

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A I don't recall this particular format of document, but it appears to be a list of tennis tournaments. So presumably it's a listing of tournaments that we have.

Q Wasn't this prepared under your supervision, this chart?

A It may have. Again, I don't recall it at this moment. I don't have any reason to doubt it.

Q Did you supervise personally any preparation of information like this for the experts in this case?

A I was involved with the preparation of some of it.

Q But you didn't supervise it?

A Yes. I'm not sure what the definition of "supervise" is.

Q Did you oversee information like this when it was prepared by your side to make

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1 !	SIITA	1 T	747 A C	accurate?	,

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A Ever viewed them? I don't recall this particular document.

Q Okay. If you turn over to -there are some colored sections of the
document. And if you go over to --

JUDGE SIPPEL: You mean that there are highlighted lines, --

MR. CARROLL: Yes. Thank you.

JUDGE SIPPEL: -- certain lines?

11 Okay. Thank you.

MR. CARROLL: That is more articulate. There is highlighting. And I am looking at a page that says 9 of 37 at the bottom. And it has pink highlighting at the top and green, then some blue highlighting and yellow and pink at the bottom.

BY MR. CARROLL:

Q Have you found that, sir?

A I have.

Q And am I right that at the blue part that is highlighted here, we see your

coverage for the U.S. Open. In this year it's 2010 coverage, right?

A Again, I have no reason to argue that. I would have to go compare it to be sure, but it appears to be that.

Q Okay. And do you see in the column that is about two-thirds of the way over, it identifies for you whether it's live or whether it's something called encore? Do you see that?

A I do.

Q And I take it live matches would say live there. Everything else is something else, correct?

A Yes.

Q And the same would be true for the pink, green, and yellow highlighting on that page unless it says live? If it says something else, that means you're not carrying live matches?

A Well, it may not have been live at the time. Yes, that match may not have been

live. It doesn't mean we're not carrying them in the time. It depends on the time period.

In other words, there could be two matches that are on simultaneously. So we could run one live and then one we say first run, which would be a delay of a match that otherwise wouldn't have been seen before.

Q It means you're not showing it live?

A That match wouldn't have been shown live, correct.

Q Okay.

A Presumably.

Q Now, you lumped together -- you used the term "anchor programming" in this case. Have you used that term?

A Yes.

Q You use anchor programming, as I understand it, to cover not only live coverage but any coverage that you run for the next two weeks. Is that right?

A Not any coverage. It would be

		Page 466
1	Q You	don't think it's the case or
2	you don't know?	
3	A Of	exclusively live over
4	Q Liv	e coverage.
5	A	the course of the year in terms
6	of	
7	JUD	GE SIPPEL: Wait a minute. You
8	can only go one	at a time.
9	BY	MR. CARROLL:
10	Q Liv	e coverage, sir. Your
11	live co	verage is a lot less
12	A On	a
13	Q	than a live coverage
14	JUD	GE SIPPEL: Wait a minute.
15	Wait just a min	ute, now. Let him ask the
16	question.	
17	BY :	MR. CARROLL:
18	Q	than the live coverage on
19	Versus and Golf	that my client has? Isn't
20	that correct?	
21	A Is	your question in terms of hours
22	or in terms of	percentages.

Live hours, the percentage of

Of their total day?

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1 coverage that is live, sir.

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A Of their total amount of hours on the air, the of it is live?

Q Of their total anchor coverage.

A Oh, anchor coverage. So that's not necessarily live.

Q No. Their live portion of their anchor coverage. You include as anchor coverage lots of stuff that's live.

A But you hadn't said anchor coverage until --

Q Let's start again. I'm glad we're doing this. You define anchor coverage to include a lot of things that aren't live, agreed?

A Yes.

Q In fact, as just talked about percentages, most of your anchor programming is not live, agreed?

A Well I would consider not a significant number.

Q I used "most." Is most of your

	Page 469
1	anchor programming live or not?
2	A I think a lot of it is, yes.
3	MR. CARROLL: Your Honor, could
4	the witness be directed to answer my question?
5	JUDGE SIPPEL: Answer the
6	question. Let's approach it again.
7	BY MR. CARROLL:
8	Q Is most of your anchor programming
9	live or not?
10	A I will say no.
11	Q And isn't it the case that the
12	amount of your anchor programming that is live
13	is significantly less than the percentage of
14	Versus and Golf that is live programming?
15	Isn't that correct?
16	A It may be. I'm not looking at the
17	numbers.
18	Q You don't think that factor is
19	important in your discrimination case as to
20	whether you are similarly situated?

factor that should be taken into account.

Oh, I think it is certainly a

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Page 470

don't think that something that has been delayed so that it can be seen in a higher rated time period, like NBC does with the Olympics, would make it less valuable.

In some cases, it is to the benefit of the consumer. If they haven't seen something that has happened, say, in the middle of the night and we can put it on in a time period as well as live, where they're able to see it, then it makes it less valuable. And the ratings bear that out.

So I also think that on a total hour basis, rather than just a percentage basis, I think we are not only competitive but superior.

ask you one other thing because I asked you about this two-week before. Do you know how many times you will actually run the same match again and again and again as part of your anchor programming?

A Depends how good the match is.

Q Seven or eight times sometimes?

A If it's a great match, we could.

It would be unusual, but if Rafael Nadal is

going in a squeaker in the French that becomes

a classic match, we generally attempt to

program by listening to what people tell us

they want to see. And we give them more of

it.

We have thousands of matches to choose from. And we'll put on the ones that seem to be the most popular.

Q Let me ask you about that, then.

If you still have exhibit 723, that's the colored, highlighted document in front of you.

A I do.

Q If you go to the first programming page of that, not the coverage page of the exhibit but the first page in. It has some yellow bands on it, I just picked this as an example.

MR. CARROLL: Your Honor, it should say "Page 1 of 37" at the bottom, some

It was first run.

It was

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Α

Okay.